

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BEN GORDON, G7, INC., and BG4, INC.)

Plaintiff,)

vs.)

VITALIS PARTNERS, LLC; LARRY)

HARMON & ASSOCIATES, P.A.; KCDD)

DEVELOPMENTS, LLC; LARRY)

HARMON; and KENNY CRUZ)

Defendants.)

No. 07 C 6807

PLAINTIFFS' MOTION TO DISMISS DEFENDANTS' COUNTERCLAIM

Plaintiffs, BEN GORDON, G7, INC. and BG4, Inc. (collectively, "Gordon"), by and through their attorneys, SPELLMIRE & SOMMER, and pursuant to Federal Rule of Civil Procedure Rule 12(b)(6), submit this Motion to Dismiss the Defendants' Counterclaim.

1. The Defendants' counterclaim is based upon the flawed premise that Gordon had no right to terminate the Defendants as his financial and investment fiduciaries.

2. However, the Defendants' counterclaim must fail as a matter of law as it is a fundamental principle that a client has the absolute right to terminate his fiduciary and this right cannot be limited by contract.

3. Binding law provides that this matter of simple contract interpretation, law and public policy is a proper subject of a Rule 12(b)(6) Motion to Dismiss.

4. Accordingly, this Court should enter an Order dismissing the Defendants' counterclaim with prejudice.

5. The Plaintiffs incorporate all of the arguments and authorities contained in their Memorandum in Support of this Motion filed simultaneously herewith.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an Order dismissing with prejudice the Defendants' counterclaim.

_____/s/_____
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